

STATE WATER CONTROL BOARD
PRELIMINARY DECISION ON SECTION 401 WATER QUALITY CERTIFICATION OF
NORFOLK DISTRICT ARMY CORPS OF ENGINEERS REGIONAL PERMIT 05 FOR
CONSTRUCTION OF SMALL IMPOUNDMENTS

November 16, 2007

The State Water Control Board tentatively provides conditional §401 Water Quality Certification for activities covered under the RP-05 for Construction of Small Impoundments as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification, provided that the following conditions are met:

1. Agricultural surface water withdrawals from nontidal waters that total less than one million gallons in a single month do not require flow-by of water past the impoundment. Withdrawals greater than or equal to one million gallons in a single month will be subject to a DEQ permit, unless otherwise exempt, that includes withdrawal limits to ensure the protection of in-stream beneficial uses downstream of the impoundment.
2. Surface water withdrawals from nontidal waters for all other purposes that total less than 10,000 gallons per day do not require flow-by of water past the impoundment. Withdrawals greater than or equal to 10,000 gallons per day will be subject to a DEQ permit, unless otherwise exempt, that includes withdrawal limits to ensure the protection of in-stream beneficial uses downstream of the impoundment.
3. The permittee shall report surface water withdrawals: 1) where the average daily withdrawal during any single month exceeds 10,000 gallons per day for the purposes of, but not limited to, public water supply, manufacturing, mining, commercial, institutional, livestock watering, artificial fish culture, and steam-electric power generation uses; and 2) where the withdrawal exceeds 1 million gallons in any single month for the purpose of irrigating crops. Permittees are not required to report the withdrawal of surface water if the withdrawal is made from a pond that only collects diffuse surface water (pond that is not located in a wetland or on an intermittent or perennial stream).

Pursuant to our Virginia Water Protection Permit Regulation 9VAC 25-210-130.H, the State Water Control Board can only issue final §401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification. The State Water Control Board will issue its final §401 Water Quality Certification for the above referenced Regional Permit authorized by the Norfolk District U.S. Army Corps of Engineers at the end of that period and after any comments received are considered.